

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

TRICIA W.,

Plaintiff,

-v-

5:22-CV-794

COMMISSIONER OF
SOCIAL SECURITY,

Defendant.

APPEARANCES:

OF COUNSEL:

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KATHRYN S. POLLACK, ESQ.
Special Ass't U.S. Attorney

DAVID N. HURD
United States District Judge

ORDER ON REPORT & RECOMMENDATION

On July 27, 2022, plaintiff Tricia W.¹ (“plaintiff”) filed this action seeking review of the final decision of defendant Commissioner of Social Security (“Commissioner”) denying her application for Disability Insurance Benefits (“DIB”) and Supplemental Security Income (“SSI”) under the Social Security Act (the “Act”). Dkt. No. 1. Plaintiff also sought leave to proceed *in forma pauperis* (“IFP Application”). Dkt. No. 3.

Thereafter, U.S. Magistrate Judge Daniel J. Stewart granted plaintiff’s IFP Application, Dkt. No. 8, the Commissioner filed a certified copy of the Administrative Record, Dkt. No. 9, and then both parties briefed the matter in accordance with General Order 18, which provides that an appeal taken from the Commissioner’s denial of benefits is treated as if the parties have filed cross-motions for a judgment on the pleadings, Dkt. Nos. 10, 14, 15.

On June 8, 2023, Judge Stewart advised by Report & Recommendation (“R&R”) that the Commissioner’s motion be granted, that plaintiff’s motion be denied, that the Commissioner’s decision be affirmed, and that plaintiff’s complaint be dismissed. Dkt. No. 16. Plaintiff has filed objections, Dkt. No. 17, which have been fully briefed, Dkt. No. 18.

¹ In accordance with a May 1, 2018 memorandum issued by the Judicial Conference’s Committee on Court Administration and Case Management and adopted as local practice in this District, only the first name and last initial of plaintiff will be mentioned in this opinion.

Upon *de novo* review of the portions to which plaintiff has lodged specific objections, the R&R is accepted and will be adopted in all respects. *See* 28 U.S.C. § 636(b)(1)(C). In particular, the Court agrees with the Commissioner that plaintiff's objections are based on language from several factually distinguishable Social Security cases. A review of Judge Stewart's R&R confirms those cases reached different conclusions based on different records.

Therefore, it is

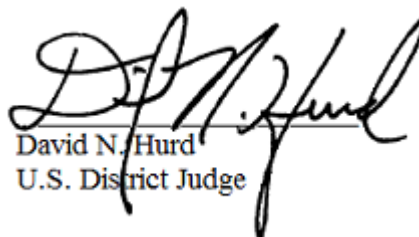
ORDERED that

1. The Report & Recommendation is ACCEPTED;
2. Plaintiff's motion is DENIED;
3. The Commissioner's motion is GRANTED;
4. The Commissioner's decision is AFFIRMED; and
5. Plaintiff's complaint is DISMISSED.

The Clerk of the Court is directed to terminate the pending motions, enter a judgment accordingly, and close the file.

IT IS SO ORDERED.

Dated: July 11, 2023
Utica, New York.


David N. Hurd
U.S. District Judge